

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

### PART 1425—FOREIGN ACQUISITION

#### Subpart 1425.2—Buy American Act—Construction Materials

Sec.

1425.203–70 Evaluating offers and price adjustment proposals.

1425.205 Solicitation provision and contract clause.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 61 FR 15390, Apr. 8, 1996, unless otherwise noted.

#### Subpart 1425.2—Buy American Act—Construction Materials

##### 1425.203–70 Evaluating offers and price adjustment proposals.

(a) Upon receipt of an offered foreign construction material, the CO will conduct a 2 part test to determine, first, if the cost of the components made in the U.S. exceeds 50% of the cost for all the components; and second, if the item meets the first test, whether the item is manufactured in the U.S.

(b) The cost of U.S. material is unreasonable if it exceeds the cost of the foreign construction material by more than 6%. The CO will compute the cost of construction material to include all delivery costs to the construction site, and any applicable duty (whether or not a duty-free entry certificate is issued.) This evaluation will be made for each foreign construction material proposed in the offer not excepted by the Government either in the solicitation at 48 CFR 1452.225–70(a) or by subsequent amendment.

(c) The contractor shall pass to the Government any cost savings resulting from post-award approval to use foreign material. The CO may approve exceptions based on cost if the contractor can document that it used U.S. as well as foreign quotes to calculate the price it offered to the Government. If it is shown that the contractor did not obtain the quotes before award, the Director, PAM is authorized to disapprove requests for exceptions to the use of U.S. material. In case of dis-

approval, the contractor shall use the U.S. material and shall not pass on the additional cost of the U.S. material to the Government.

##### 1425.205 Solicitation provision and contract clause.

In addition to using the clauses required in FAR 25.205, the CO will insert the clause at 48 CFR 1452.225–70, Use of Foreign Construction Materials—Department of the Interior, in solicitations and contracts for construction, alteration, or repair inside the U.S. If the Government has determined that a U.S. construction material is unavailable, it will be listed under paragraph (a) of the clause.

### PART 1426—OTHER SOCIO-ECONOMIC PROGRAMS

#### Subpart 1426.70—Indian Preference

Sec.

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AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c) and 5 U.S.C. 301); Pub. L. 93–638, 88 Stat. 2205 (25 U.S.C. 450e(b)).

SOURCE: 60 FR 53279, Oct. 13, 1995, unless otherwise noted.

#### Subpart 1426.70—Indian Preference

##### 1426.7000 Scope of subpart.

This subpart prescribes policies and procedures for implementation of section 7(b) of the Indian Self-Determination and Education Assistance Act (Public Law 93–638, 88 Stat. 2205, 25 U.S.C. 450e(b)).

##### 1426.7001 Definitions.

For purposes of this subpart the following definitions shall apply:

*Indian* means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the

preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of the Tribe.

*Indian organization* means that governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (Pub. L. 93–262, 88 Stat. 77; 25 U.S.C. 1451).

*Indian-owned economic enterprise* means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

*Indian reservation* includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, (Pub. L. 92–203, 85 Stat. 688; 43 U.S.C. 1601 *et seq.*).

*Indian Tribe* means an Indian Tribe, band, nation, or other recognized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Pub. L. 92–203, 85 Stat. 688; 43 U.S.C. 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*On or near an Indian reservation* means on a reservation or the distance within that area surrounding an Indian reservation(s) that a persons seeking employment could reasonably be expected to commute to and from in the course of a work day.

#### **1426.7002 Statutory requirements.**

Section 7(b) of the Indian Self-Determination and Education Assistance Act requires that any contract or sub-contract entered into pursuant to that Act, the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 452), as amended, (the Johnson-O'Malley Act), or any other Act authorizing contracts with Indian organizations or for the benefit of Indi-

ans shall require that, to the greatest extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such contracts shall be given to Indians, and

(b) Preference in the award of sub-contracts in connection with the administration of such contracts shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (Sec. 3, Pub. L. 93–262; 88 Stat. 77; 25 U.S.C. 1452).

#### **1426.7003 Applicability and contract clause.**

(a) The Contracting Officer (CO) shall insert the clause at 1452.226–70, Indian Preference—Department of the Interior, in solicitations issued and contracts awarded by

(1) The Bureau of Indian Affairs,

(2) A contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations and

(3) A contracting activity other than the Bureau of Indian Affairs where the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(b) The CO shall insert the clause at 1452.226–71, Indian Preference Program—Department of the Interior, in all solicitations issued and contracts awarded by a contracting activity which may exceed \$50,000, which contain the clause required by paragraph (a) of this section and where it is determined by the CO, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The Indian Preference Program clause may also be included in solicitations issued and contracts awarded by a contracting activity which may not exceed \$50,000, but which contain the clause required by paragraph (a) of this section and which, in the opinion of the CO, offer substantial opportunities for Indian employment, training or sub-contracting.

**1426.7004 Compliance enforcement.**

(a) The CO is responsible for conducting periodic reviews of the contractor to ensure compliance with the requirements of the clauses prescribed in 1426.7003. These reviews may be conducted with the assistance of the Indian Tribe(s) concerned.

(b) Complaints of noncompliance with the requirements of the clauses prescribed under 1426.7003 which are received in writing by the contracting activity shall be promptly investigated by the CO and a written disposition of the complaint shall be prepared.

**1426.7005 Tribal preference requirements.**

(a) Where the work under a contract is to be performed on an Indian reservation, the CO may supplement the clause at 1452.226-71, Indian Preference Program—Department of the Interior, by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The supplemental requirements shall

be jointly developed for the contract by the CO and the Tribe. Supplemental preference requirements must represent a further implementation of the requirements of section 7(b) of Public Law 93-638 and must be approved by the SOL for legal sufficiency before being added to a solicitation and resultant contract. Any supplemental preference requirements to be added to the clause at 1452.226-71 shall be included in the solicitation and clearly identified in order to ensure uniform understanding of the additional requirements by all prospective bidders or offerors.

(b) Nothing in this subpart shall be interpreted to preclude Tribes from independently developing and enforcing their own tribal preference requirements. Such independently developed tribal preference requirements shall not, except as provided in paragraph (a) of this section, become a requirement in contracts covered under this subpart 1426.70 and must not hinder the Government's right to award contracts and to administer their provisions.